

REMARKS

Claims 1-13, 16-18, 35, 37, 38, 40-42, 44-46, 59, 61 and 62 are currently pending in the subject application and are presently under consideration. Claims 1, 20, 35, 48, 59 and 62 have been amended while claims 19-34, 36, and 47-58 have been canceled as shown on pages 2-10 of the Reply. In addition, it is noted with appreciation that claim 19 would be allowed if re-written in an independent form including all limitations of the base claim. Applicants' representative Bhavani Rayaprolu thanks Examiner Bayard for the teleconference of February 6, 2008 wherein the current rejections on record were discussed.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-13, 16-19, 35-38, 40-42, 44-46 Under 35 U.S.C. §101

Claims 1-13, 16-19, 35-38, 40-42, 44-46 stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. The Examiner alleges that computer programs are not physical things and are therefore not patentable. However, it is submitted that the standard for patentability requires the claimed subject matter to produce useful, concrete, tangible result.

Because the claimed process applies the Boolean principle [abstract idea] ***to produce a useful, concrete, tangible result*** ... on its face the claimed process comfortably falls within the scope of §101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358. (Fed.Cir. 1999) (Emphasis added); *See State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed.Cir.1998).

It is readily apparent that independent claims 1, and 35 recite acts to produce a useful, tangible, and concrete result. In particular, the system relates to randomizing scores associated with spam filters and hence it generates a useful, concrete, tangible result of a randomized filter score that can confuse spammers and thereby mitigate reverse engineering of spam filters. Furthermore, pursuant to *Eolas v. Microsoft*, software code alone qualifies as an invention eligible for patenting.

This court must also decide whether software code made in the United States and exported abroad is a "component of a patented invention" under 271(f).... Section 271(f) refers to "components of a patented invention."...

Title 35, section 101, explains that an invention [*1339] includes "any new and useful process, machine, manufacture or composition of matter."... *Without question, software code alone qualifies as an invention eligible for patenting* under these categories, at least as processes. *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338-39 (Fed. Cir. 2005) (emphasis added).

However, in order to expedite prosecution, independent claims 1, and 35 have been amended herein to clearly illustrate that elements within such claims are associated with a computer. In particular, claim 1 has been amended to recite that the components comprised with in the system are executed on a computer processor while claim 35 has been amended to recite that the instructions of the claimed methodology are stored in a computer readable storage medium. Accordingly, these claims includes functional descriptive material within a computer, thereby the recited elements are structurally and functionally interrelated to the computer and are therefore directed to statutory subject matter. In view of at least the foregoing, withdrawal of this rejection is respectfully requested.

II. Rejection of Claim 35 Under 35 U.S.C §112

Claim 35 stands rejected under 35 U.S.C §112, second paragraph due to minor informalities. In view of the aforementioned amendments to this claim addressing such informalities, withdrawal of this rejection is respectfully requested.

III. Rejection of Claims 1-13, 16-18, 35-38, 40-42, 44-46, 57, 59, 61-62 Under 35 U.S.C. §102(e)

Claims 1-13, 16-18, 35-38, 40-42, 44-46, 57, 59, 61-62 stand rejected under 35 U.S.C. §102(e) as being anticipated by Bandini, *et al.* (U.S. 20050081059) Withdrawal of this rejection is requested for at least the following reasons. It is submitted that this rejection should be withdrawn for at least the following reasons. Bandini, *et al.* does not describe each and every element of the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently *describes each and every limitation* set forth in the patent claim. *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 U.S.P.Q.2D 1597 (Fed. Cir. 2002). "A claim is anticipated only if *each and every element* as set forth in

the claim is found, either expressly or inherently *described* in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The *identical invention* must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The claimed subject matter generally relates to systems and methods for reducing the transmission of spam and in particular to hindering reverse engineering of a spam filter and/or to mitigate modeling and prediction of spam filters performance by spammers. To this end, independent claims 1, 35, 59 and 62 recite similar features namely: *a randomization component that randomizes scores of the filter for one or more messages based at least in part upon a hash computed to randomize the message score, the hash is computed based at least in part upon one or more features extracted from the message whose respective individual contributions to the message score exceed a threshold, ..., wherein the spam filtering system making use of a sigmoid function having the formula of $finalscore = \frac{1}{1 + e^{-summedscore}}$, wherein at least one of the summedscore value or the finalscore value is randomized to effectively modify spammer behavior and to mitigate reverse engineering of the filtering system.* Bandini, *et al.* fails to teach or suggest such novel aspects.

Bandini, *et al.* relates to a relay that provides message filtering services to an email network. In accordance with Bandini, *et al.* a hash value is computer from the incoming email message body. This hash value is compared to hash values computer from body text of messages in SPAM database. A match of the hash values significantly increases the likelihood that the incoming message is SPAM. However, it does not teach or suggest computing hash value based upon one or more features selectively extracted from the message whose respective individual contributions to the message score exceed a threshold or randomizing a score of the message filter based on the calculated hash value. In contrast, the claimed subject matter relates to modifying one or more scores associated with a message to effectively add noise to the real score. Therefore, from the many features extracted for a given message, certain features whose contributions to the score exceed a certain threshold are selected and a hash of the selected features is then calculated and that hash is used as input to a random number generator. The random number generator outputs a random number for a particular message which is then added

to the score, for example, final score or summedscore when the filter uses a sigmoid function thereby obfuscating the spam filter to spammers who try to reverse engineer it.

In view of at least the following it is clear that an identical invention as recited in the subject independent claims is not taught or suggested by the cited document. Hence, withdrawal of this rejection is requested with respect to the independent claims 1, 35, 59 and 62 as well as all claims that depend there from.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP439US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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